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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,990	06/30/2003	Earl Harling	NIDN-73132	6720
36335	7590	03/16/2009		
GE HEALTHCARE, INC. IP DEPARTMENT 101 CARNEGIE CENTER PRINCETON, NJ 08540-6231				
EXAMINER				
DOUGLAS, STEVEN O				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
03/16/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/009,990

Applicant(s)

HARLING ET AL.

Examiner

/Steven O. Douglas/

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SD/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger'502 in view of Levy et al. (US 4,332,244).

The Jaeger reference comprises a ventilation system for experimental animals (see Fig. 1) comprising an induction chamber containing a first compartment 10 with a means for the supply and removal of a gaseous substance (see the coaxial arrangement of elements 230 and 165) and a second compartment 5 connected to an inlet 230, wherein the gaseous passes into the second compartment and thence to the inlet (i.e. the escaping gaseous substance coaxially surrounds the inlet and therefore meets the limitation of passing anesthetic to the inlet).

In regard to claim 10, wherein the joining of the first compartment to the second compartment meets the limitation of selective closing of the passage defined by element 165.

In regard to claim 11, wherein the inlet 165 is located in the upper or top right portion of the second compartment and a ventilation hole 34 is located in a lower region thereof for receiving intake air from the nebulizer 35.

However, the Jaeger reference fails to explicitly disclose use of the ventilation system with an anesthetic substance. Attention is further directed to the Levy et al. reference which discloses another ventilation system for experimental animals which utilizes an anesthetic

substance in order to facilitate experimental tests and procedures on the experimental animals. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Jaeger device to accommodate an anesthetic (if not already) as taught by Levy et al. in order to allow experimental animals to be anesthetized to facilitate experimental tests and procedures (i.e. including surgical procedures) to be done on the experimental animals.

Response to Arguments

Applicant's arguments filed 1/22/09 have been fully considered but they are not persuasive.

In regard to Applicant's argument that Levy only uses masks for delivery of anesthetic gases to lab animals and does not disclose using breathing station compartments that would fill a chamber with gas without the use of masks, Applicant argues the rejection as if the teaching reference (i.e. Levy) must anticipate the claims and Applicant is reminded that *Examiner depends on Levy to merely show that the administering of anesthetic to small animals* is readily known. The limitation of the use of breathing station compartments is already disclosed by Jaeger (see above rejection).

In regard to Applicant's argument that Levy fails to disclose delivery of precise amounts of gas anesthetics, again Applicant argues the rejection as if the teaching reference (i.e. Levy) must anticipate the claims and Applicant is again reminded that *Examiner depends on Levy to merely show that the administering of anesthetic to small animals* is readily known. The limitation of the delivery of precise amounts of gas would already be disclosed by Jaeger (i.e. by the mere function of Jaeger to delivery a known quantity of gas).

In regard to Jaeger failing to disclose the use of a volatile liquid anesthetic to be vaporized, Examiner reiterates his position that with a minimal amount of experimentation one of ordinary skill would be able to modify the Jaeger device to accommodate a liquid anesthetic and the precise amount of gas/liquid anesthetic would be ascertained by the minimal experimentation.

Conclusion

This is an RCE of applicant's earlier Application No. 10/009,990. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner
Art Unit 3771

SD
3/13/09